

Torn between two targets: German police officers talk about the use of force

Klukkert, Astrid; Ohlemacher, Thomas; Feltes, Thomas

Postprint / Postprint

Zeitschriftenartikel / journal article

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

www.peerproject.eu

Empfohlene Zitierung / Suggested Citation:

Klukkert, A., Ohlemacher, T., & Feltes, T. (2008). Torn between two targets: German police officers talk about the use of force. *Crime, Law and Social Change*, 52(2), 181-206. <https://doi.org/10.1007/s10611-008-9178-5>

Nutzungsbedingungen:

Dieser Text wird unter dem "PEER Licence Agreement zur Verfügung" gestellt. Nähere Auskünfte zum PEER-Projekt finden Sie hier: <http://www.peerproject.eu> Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

gesis
Leibniz-Institut
für Sozialwissenschaften

Terms of use:

This document is made available under the "PEER Licence Agreement". For more Information regarding the PEER-project see: <http://www.peerproject.eu> This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

Mitglied der

Leibniz-Gemeinschaft

Torn between two targets: German police officers talk about the use of force

Astrid Klukkert · Thomas Ohlemacher ·
Thomas Feltes

Published online: 13 December 2008
© Springer Science + Business Media B.V. 2008

Abstract Considering earlier research into police use of force as well as the judicial and practical frame of police work in Germany, the article presents the results of an empirical study on the individual and collective legitimization of the use of force by German police officers. There are numerous justifications for the use of force expressed by focus group participants in eight German Federal States who were responding to a hypothesized scenario. In the discussions observed within the groups, reference is first made to the state's duty to prosecute alleged offences and the measures or formal actions to do this—hence, the legal authority to use force. In the course of the discussions, however, it became obvious that illegal violence may occur, although it was not perceived as such by the officers. Overall, and after an intensive analysis of the focus group discussions, it can be stated that use of force (whether legal or not) depends on the police officer's perception of the resistance of the person being engaged with. In this regard, different social-cultural or physical-material factors can be identified. They have different influences on the individual legitimization of police actions, intertwined with the perception of the situation as constructed by the officer. Three ways of perceiving the situation can be deduced, resulting in different patterns of justification for the use of force.

A. Klukkert (✉)

Ruhr-University Bochum, Master of Criminology and Police Science—Ruhr-Universität Bochum,
Universitätsstraße 150, GC 5, 44801 Bochum, Germany
e-mail: astrid.klukkert@rub.de

T. Ohlemacher

Lower Saxony Police Academy and University of Hildesheim—Polizeiakademie Niedersachsen,
Gimter Str. 10, 34346 Hannoversch Münden, Germany
e-mail: thomas.ohlemacher@polizei.niedersachsen.de

T. Feltes

Ruhr-Universität Bochum, Criminal Justice Policy and Police Science—Ruhr-University Bochum,
Universitätsstraße 150, GC 5, 44801 Bochum, Germany
e-mail: thomas.feltes@rub.de

Introduction

Reducing violence, whether it is the use of force by police officers or the violent behaviour of citizens, is one of the central aims of modern democratic societies. Therefore, examining the justifications of actual or presumed legal use of force by police officers is important so as to identify the thin line where the legal is replaced in the officer's defence, in order to justify actual behaviour.

This text presents the results of the German part of the international Police Use of Force Project and the results of focus groups organized with eight different German police forces. The article identifies, illustrates and discusses the justifications for the use of force. We also show how excessive use of force originates. Prior to the presentation of the results of our research, we briefly review the international and national literature, followed by an outline of the structure of the German police forces. Finally, the presentation of our empirical results is focused on five main topics, identified during the focus group discussions.

Research into police use of force

As attested to by world-wide media attention, there is a great deal of interest in the use of force by and against police officers [12, 15, 28, 47]. However, internationally the level of academic knowledge regarding this topic is highly unequally distributed. In the US and Great Britain, for example, there is—in contrast to Germany—a long established tradition of research, including empirical research, regarding the police. Feltes and Punch [10] describe the most important trends of this research. Manning [24] and Walker [48], for example, concisely analyse the changed role of police in society and the changing image of self among police officers in Anglo-Saxon countries. They describe how police forces in England and the US, that in the nineteenth century exhibited extremely limited discipline but a high degree of use of violence, changed and became the organisations they are today. In fact, most contemporary police institutions (and this also applies to Germany) have very extensive rules to regulate the use of force. In addition, police officials are given intensive training in conflict management, reduction of force and de-escalation techniques, bearing in mind that police officers on patrol often have only seconds to decide how to respond to a given situation. Many factors, such as the milieu, the police organisation and the situation immediately at hand influence these decisions [54]. Added to these factors are personal and, above all, sub-cultural aspects, and the question is if and how these factors affect police action and police integrity and how they can be measured (compare [22] and [44]).

Regarding police use of force, although we are dealing with the core field of governmentally justified use of force (in the sense of a 'monopoly of justified physical force' identified by Max Weber [49]), very little empirical research has been conducted on this topic in Germany. In the 1990s, the improper use of force by police officers was discussed in relation to xenophobia [7]; however, also of concern also was force used against other fringe groups and journalists. At that time, aspects of police structure and management were mentioned as possible reasons for infringements, especially in connection with the so-called "Hamburger Kessel", a

forceful, long-lasting police response to a political rally by encircling the participants [11, 41].

Questioning police officers and citizens is one method for studying the use of force. Using this methodology, the 1997 study by Alpert et al. [2] brought to light how different (and sometimes surprisingly similar) perspectives can be. In this study, police officers, their superiors and suspects were asked to quantify the proportion of cases in which, in their opinion, the pursuit of motor vehicles by the police ended with the use of force. Police officers estimated this as 53%, their superiors 47%, and suspects 46%. Compared with an evaluation of 1,200 car chases, which had actually taken place, these were clearly inflated estimations. Indeed, in only 17% of actual cases had the car chase ended in the use of force. A similar result arose from the question regarding the use of “excessive force” after such car chases. Here, 13% of the police officers, 11% of their superiors, and 14% of the suspects stated that excessive force would be used; in the official files, however, there was no case which could be classified in this way. These results suggest that official files may be a highly questionable source for establishing the quantity and quality of police infringements of the norms.

All studies dealing with police use of force make the point that only a fraction of police–citizen interactions actually result in the use of force: indeed, abundant evidence provided by Alpert and Dunham [1], see also [15] put it at between 1% and 2%. Even taking into account “disrespect” shown by police, which although unreasonable is not necessarily violent behaviour by police officers, no more than 4% of all cases can be characterised as such [26].

In addition to citizen surveys, surveys of police officers have been carried out as well, to establish how and to what extent officers use force or whether they regard excessive force as acceptable. In a study conducted by the Police Foundation—a nonprofit organization in Washington, D.C., that seeks to improve policing in America through research [50, 51]—25% of the police officers questioned agreed with the statement that it would be acceptable at times to use more force than is legally permitted simply to bring or to keep a person under control in a specific situation. In the same study, six out of ten police officers stated that their colleagues did not always report or disclose law infringements by police officers—including improper use of force and even serious violations.

Manzoni and Eisner point out that in the officer’s daily routine the practical challenge is to assess (think through and measure) in advance the amount of force needed to prevent possible resistance or to suppress it immediately should it arise, thus preventing an escalation of the encounter. The fine line between appropriate and excessive use of force cannot be determined as a generality, but has to be determined both individually and on a day-to-day basis during the course of routine police work, as well as being collectively negotiated within the police force (compare [25]).

As mentioned before, the responsibility of police, their integrity, and their legal or illegal use of force receive worldwide attention. This undoubtedly reflects the fact that the police officer on the street has more control over life and death than any other civil servant or citizen in times of peace [16]. Moreover, it is a characteristic of police work that the responsibility to decide whether and when to use force is largely left to those police employees located at the lowest level of the police hierarchy [55].

An analysis of the reasons for unjustified, avoidable use of force by police is of fundamental importance because such analyses may prevent further problems. Time and other factors are mentioned which might play a role in this context: a lack of professionalism among police officers; working conditions which are characterised by stress, pressure and grind; a violent masculine subculture; unlimited rules on the right of intervention; and the instrumental use of police by politicians [29, 37]; regarding contrary findings as to the meaning of strain, compare [25]. According to Alpert and Dunham [1], two factors significantly affect the excessive use of force in a specific situation: the level of resistance by the citizen, and whether the citizen had been drinking or taken drugs prior to the encounter with the police. If the latter is the case, less violence is used. In the former case, a higher readiness to resort to violence on the part of the citizen creates a higher level of violence as a response from the police officer. Age and ethnic affiliation have no influence [1].

According to Alpert and Dunham [1], the level of use of force by police depends on the expected level of resistance from the citizen. In addition, the more the police officer is unable to attain the goal he (or she) sets himself, the more likely and more intense becomes the use of force. For example, this would be the case when the persons involved do not follow officers' instructions, or the officers (for whatever reasons) do not achieve control over the communication process or over the situation. The probability of a more intense use of force increases if—in a specific situation—the authority of the officer is challenged or the officers feel this to be the case.

Excessive use of force will also occur when the police officer responds at the outset to a situation with a higher level of use of force than is actually necessary (because, for instance, the officer has experienced previous similar incidents as being more violent than the present case presents). As a result, the person facing the police may regard this use of force as unreasonable and will react aggressively, which has a cyclical effect. Both parties are afraid to lose face and this spiral of force, once started, can only be stopped with difficulty. Batt and Dickhaut ([3], p. 47) take up this aspect from the police's point of view: "By resolute, consequent and professional action, already when approaching a suspect, the latter (has to be) convinced right from the beginning, that obstructing police measures would be useless" (authors' translation).

In one of the few German studies with a substantial empirical component, Bosold [8] confirmed some of the findings from Alpert and Dunham [1, 2]. By analysing the preferred options for police intervention in systematically varied scenarios, which were presented within the framework of a representative questionnaire study to 1,674 police officers from Lower Saxony, Bosold [8] convincingly concluded that the "identity-relevant features of police actions" (e.g. the self-esteem of the officer or questioning his authority), above all else, can decisively influence the intention to infringe the legal requirements and use excessive force. According to Bosold [8], police infringements are then significantly more probable when "unfavourable features of situations" coincide. Thus, the intention to infringe is highest when (a) the self-confidence of the police officer is threatened, (b) the citizen is of foreign ethnic origin, and (c) the initial police response has not produced a result. In fact, it is the *concurrency* of all these aspects that makes an infringement more likely. On the other hand, it was not found that police officers, as a matter of principle, discriminate against ethnic foreigners, or as a general rule exact "compensatory

justice” in cases of unsuccessful responses. In relation to the threat to self-esteem, the study pointed out that, besides the identity relevant aspects of the *situation* (operationalized in the study by the insult “screw pigs”) the identity-related *personal* features (such as general and organisation-related self-esteem, and the degree of identification with the organisation) are also of importance. Here, above all, very low and also very high self-esteem/identification are problematic in specific constellations of situations, because they increase the readiness for encroachment significantly (e.g. in form of excessive use of force) [8].

With their *Authority Maintenance Theory*, Alpert and Dunham [1] try to explain police use of force. They propose that force is used in order to maintain the authority of the officer’s individual action, the authority of the police as an institution and that of the state. It is unthinkable for a police officer not to assert himself, nor to respond to the demand for action. This is activated by the instruction of a police officer or solely by his appearance: what is at issue here is the maintenance of governmental, organisational and individual authority. For Alpert and Dunham [1], police responses form an interactive process in which both citizen and police officer are involved. Their theory brings in the interaction theory of Goffman [18], on the one hand, and the principle of appropriateness on the other. However, they also emphasise that basically asymmetric situations are prevalent for those involved: whilst the citizen who is involved has little or no possibility of increasing his authority, police officers have various measures at their disposal to do so. The police officer can make use of different means, depending on the situation and the process of interaction. In total, the level of the use of force by the police officer is commensurate with the expected resistance. If officers anticipate a high level of resistance, they will begin the encounter with a greater use of force than if the reverse were the case. On the other hand, there are relatively few cases in which, already at the outset, violence is matched by violence. Usually, escalation will occur, in which officers try to stay ahead of citizens with regard to the use of force. An important objective which officers try to achieve through their actions is to maintain order: that means, for example, stopping the citizen’s use of violence (for instance, victimising another citizen) and/or the creation of orderly communication (for instance, clarifying the facts). An additional aim would be to establish respect from the citizens involved, thus allowing the police officers to attain and/or maintain authority over the situation.

The research results cited up to now can be summarised as follows: police officers have to continuously decide—without being able to determine in advance how the situation will unfold or conclude—whether the situation at hand is harmonious and peaceful or aggressive and conflict-ridden. In particular, least visible are the decisions of those police officers that have the biggest effect on “normal” citizens [39]: On the one hand *the use of force by police occurs relatively infrequently*, on the other hand, *a significant percentage of police officers is ready to use more force than allowed* (i.e. violence) in order to control a situation or a person. At the same time, *only a few police officers are prepared to officially report or disclose such misconduct*. However, when such incidents are reported to the supervising officers, *the majority of proceedings against police officers are suspended* [20, 42].

The police officer on the street, the lowest rank in the hierarchy, is in a key position regarding the use of force [23]. The problem is that often inexperienced, younger officers are called in to do patrol duty. Although their decisions and the

resulting responses are primarily determined by what they have learned during their training, they primarily assimilate the “usual practice” valid for their scope of work from the habits and methods of their experienced, more senior colleagues (in the German police the so-called “bear leaders”), and the responses deemed by them to be “decent” or justified. Research shows that the training of police officers only has a limited influence on later responses and that the local police culture is far more influential [9, 27]. Training has a measurable effect only when the senior officers accept and support the training content, but if they disregard the training content the rookies will adopt the alternative forms of action, as developed by and acceptable to the local police culture.

Thus, the use of force is influenced by both organisational philosophy and the expectations of superiors and colleagues and “local policies.” The latter involves an organisational “local culture,” which, for instance, is of special importance in the criminal justice system and consists of informal standards, attitudes, expectations and practice taken over and “inherited” from the senior officers. Such informal cultures can only be changed with difficulty. The legal guidelines are only conditionally effective as they can easily be evaded. Waddington [47] referred to the “irony” that the more one tries to legally straitjacket the police, the more they tend to evade these constraints.

As already mentioned, elements of the so-called police subculture have been cited as being decisive in the use of force by police [9, 37]. In a first for Germany, Behr's ethnographic study of “Cop Culture” [5], also compare [6] comprehensively made the topic the subject of an empirically based discussion. Together with his earlier study about the effect of the fall of communism on the police in Eastern Germany [4], he showed how police officers digest their own experience of force and their readiness to resort to violence. Behr also refers to the “Dirty-Harry-Problem,” described by Klockars: “dirty means” are efforts to achieve “good ends” [21]; also see [33–35]. According to this, in the every-day culture of the police the use of physical force is determined by a “second code” in the form of a sub-cultural model of action. Mentioned as an element of this code is a self-description, part thereof being that police officers see themselves as being in the forefront of the battle against crime and the social chaos (“the Thin Blue Line”). In addition to this, there is the feeling of a special solidarity resulting from the collectively shared frame of interpretation: (a) that police work is perceived as being dangerous (mainly due, however, to latent, anticipated threats rather than to actual events) and (b) that one therefore has to be able to rely on one's colleagues in any situation [compare [30] and [31]. The consequence of this “cop culture”, combined with certain notions of masculinity [5], is that police officers' actions and those of their colleagues are in principle understood as legitimate. The “cop culture” approach explains excessive use of force as a result of the confrontational position towards people who seem to threaten the order defended by the police. It also explains, (a) why excessive use of force is tolerated by officers not involved and (b) on what belief the very noticeable “wall of secrecy” is based. In his most recent book, Behr [6] emphasizes the importance of the local police culture and small networks and groups as points of identity and loyalty building. Local “cop cultures” do not arise by chance and also not mainly because people with specific personality features become police officers. Instead, they have a direct connection with the orderliness of the police and the way that police is (or even has to be) organised [37, 38].

Prior to presenting the empirical results, the reader is provided with some background information on structure, legal framework and the use of force of the German police, for the better understanding of the statements of the focus groups later on.

Background information on the German police

Structure of the police forces in Germany

The first organized police forces in Germany date back to the early nineteenth century, when Napoleon's idea of establishing a "gendarmerie nationale" in France was adopted by some German Kingdoms (for the following see [15]—unless otherwise cited). There is no single, nationwide German police force nowadays. Law enforcement is a responsibility (as are culture, universities, schools and others) reserved for the 16 German federal states ("Bundesländer").

Each state maintains its own police force, in which both patrol police (uniformed) and detectives (plain clothes) function together. Branches of the police force include the general or patrol police force, the criminal police (detectives), the emergency police force and the water police. Their duties range from averting dangers to prosecuting crime. While the uniformed patrol police force mainly concerns itself with petty crime and minor offences, the criminal police deal with serious crimes and criminal offences, depending on the regulations of the respective federal state: in some states, the uniformed police deals with more than 70% of all crimes, in other states the percentage is less than 30%. The total number of police officers on duty (patrol police, detectives, border, emergency and water police) was about 265,000 in 2004, a ratio of one officer per 330 inhabitants. In fact, if one calculates absences due to the shift system, illness, training, administrative tasks in ministries, etc., the "real" ratio is about one officer for eight to 10,000 inhabitants at any given moment. Altogether, there are ten different ranks on three levels (middle, high and senior). Approximately 50% of all police officers belong to the middle ranks, 45% to high ranks and less than 5% to senior ranks [13].

Every state maintains an organizationally separate emergency police unit within its police force. These are supplied by the federal government with the necessary control structures and operational equipment. The emergency police forces are responsible for dealing with exceptional circumstances, including dangerous situations in the case of natural disasters or accidents, as well as for assisting with individual police duties. The emergency police force (or standby police reserve) is also used as a riot police in each state. Usually police recruits have to join this police force for between 1 and 3 years after their initial training and before they are committed to a local police force.

The legal framework for police

The Federal Republic of Germany is a democratic and social federation. The legal system is grounded on constitutional law, the interpretation of which might, however, be influenced both by European Union law as well as by international

law. The state is not only obliged to respect, but also to protect human dignity (Art. 1 Constitution). Individuals are guaranteed basic rights that they can cite against the state. If somebody feels that the state has violated his or her basic rights, they can take legal action culminating in bringing a constitutional complaint, i.e. any decision made by an administrative authority can be scrutinised by the courts. Court rulings in Germany are made by independent professional judges. Most judges are appointed for life and their rulings are only subject to the law.

Public prosecutors act in criminal proceedings. They are responsible for determining and clarifying the facts of a case when it is suspected that a crime has been committed. The police force is subject to federal government law. In case of suspected crimes, the prosecutors are entrusted with the investigation, assisted by the police. Accordingly, the police are under the direction and supervision of the public prosecutor's office. When the investigations are completed the public prosecutor's office decides on further proceedings, being either a withdrawal of prosecution or formulating and issuing an indictment.

The German Police must investigate all crimes brought to their attention: the principle of legality, laid down in the Penal Prosecution Code (StPO), stipulates that the police are not allowed to dismiss a case. Dismissals can only be made by the public prosecutor. In theory, when a person is suspected of a crime, it is the duty of the prosecution to lead the investigation with the assistance of the police who, in such cases, are subject to the supervision and factual instruction of the public prosecutor's office. But in reality, more than 90% of all proceedings are finally carried out by the police. Although the police are allowed to hold prisoners in temporary custody, they do not have the authority to detain anybody longer than the end of the day following the arrest.

Use of force

Education and training

Police recruits are usually given two and a half years of training, which consist of a dual system of theoretical as well as practical components (for the following see [15]—unless otherwise cited). The recruits acquire knowledge and skills in law, intervention, psychology, political science, sociology, sport, self defence and the use of firearms, as well as behavioural training (in the form of role play). Once the training is completed, the recruit has acquired the necessary qualification for entering the middle ranks (constable). To move from the middle ranks to the high ranks, a further 3 years of study at a police university or college are required. Once police students have successfully completed their studies (during which they are paid), they are qualified for the high ranks and receive the grade and diploma of a Bachelor of Science in Public Administration and Police and are promoted to the rank of a superintendent (“Kommissar”). In some parts of Germany, it is possible for students with a high school diploma who qualify for university admission to apply directly to a police college or police university and bypass the Constable stage.

To proceed to the senior ranks, a further 2 years of studies at a Police College in a state and at the Police Management Academy in Münster-Hiltrup are necessary. This Academy (converted into a formal Police University in 2006/2007 offering a

Masters degree in Police Administration) is the central training institution for all the federal states [32].

Physical coercion, excessive use of force and procedures after using force of the police

The police law uses the term “immediate physical coercion” (“unmittelbarer Zwang”) when referring to the use of force on duty. “Immediate physical coercion” is defined as acting on people or objects using bodily force, devices aiding bodily force (e.g. truncheons, batons and handcuffs) or weapons. What types of devices aid bodily force and what weapons may be used, are set out in separate regulations formulated by the Ministry of the Interior of each federal state.

As with police institutions in other countries, the German police have issued very strict and extensive regulations concerning the use of means of physical coercion. In addition, intensive training is available, which deals with the handling of conflicts, reduction of force and de-escalation techniques [15]. The physical coercion is circumscribed by State Police legislation, e.g. in ‘Baden-Württemberg’ [14, 45]. In addition every citizen, including a police officer, has a guaranteed right to self defence (§ 32 penal code [43]). The legal requirements for using physical coercion are that (a) a measure by the police cannot be implemented effectively in any other way, (b) the principle of proportionality is not neglected when implementing immediate coercion, (c) immediate coercion will have the desired impact and (d) among the different coercive means the least harmful one (capable of bringing about the effect) is to be used. Regarding firearms, there are three ways police officers may use them (each one has different regulations in police law): (a) to protect others, (b) to protect themselves (self-defence) and (c) to kill an offender (e.g. in hostage-taking situations).

Firearms may only be used without warning if this is necessary to prevent or to defend somebody against an immediate danger to life or body. The use of firearms against persons is stipulated very specifically, e.g. in the “Polizeigesetz Baden-Württemberg” [46]. Thus, the use of a firearm is only permitted if the general requirements for the use of immediate coercion have been met and using bodily force and devices aiding bodily force have been applied without success, or it is obvious that their application will prove unsuccessful. Firearms may only be used against persons if the success of police measures cannot be achieved by using them against objects. Also, a firearm may not be used if there is a high probability of endangering recognisably innocent people. This does not apply if using a firearm is the only means to avert a direct threat to life [14]. As far as intentional lethal shooting (“finaler Rettungsschuss”) is concerned, the question of whether or not, and according to which pre-conditions, such a lethal shot could be justified has been the subject of vehement debate [56]. On this matter, the federal states have enacted different regulations.

If a police officer uses immediate physical coercion he is required to write and file a report at the police station. If required by state law, an additional report is sent to the state attorney and proceedings may be initiated against the police officer. This depends on the seriousness of the case and the questions arising from the incident, and whether the legal requirements for the physical coercion were met.

Cases of police misconduct, excessive use of force or misuse of powers are investigated by special police departments; each and every case has to go to the

public prosecutor. Nevertheless, more than 90% of all cases are dropped by the prosecutor's office [42]. Special Commissions, an ombudsman and other systems or police complaints authorities as means to address citizen complaints and unlawful police violence are not available in Germany.

Up to now, no official surveys on the excessive use of force and misconduct of the police or complaints by citizens have been conducted in Germany. Incidents in which force is used are documented in the annually updated statistics of weapons at the conference of the Ministers of the Interior. In addition, a regular critical evaluation is published in the magazine "Bürgerrecht und Polizei" and on the world wide web [14]. However, there are differences between the official and the unofficial versions, due to the fact that since 1983 "unintentional shooting" has been excluded from the count, even if this has fatal consequences [38, 52].

The use of a gun by a police officer is a very rare event in Germany. During the past few years, in about 4,000 cases every year a handgun is used by a police officer. In 50 to 70 cases, the handgun is used against people, but in most cases the gun is used to shoot at dangerous or wounded animals. During an average year between three and ten people are killed and some 30 are wounded by police guns in Germany. Up to nine police officers are killed every year in the line of duty, mostly as a result of guns being fired at police officers or other weapons used against them. Officers killed in traffic or other accidents are not included in this figure [31].

Many shootings are carried out by members of the special task forces; thus, most German police officers only use their weapons at regular target practice.¹ The enquiry procedure during which the police officer cannot be sanctioned until found to have contravened the legal limits of physical coercion at a formal proceeding usually takes either quite a long time or is dismissed immediately. The result is that police officers and their supervisors have "immunity to sanctions" [19]. Likewise, the probability of a police officer being found guilty of a crime is low. There is no systematic documentation of the number of infringements by the police or the excessive use of force that result in disciplinary or criminal proceedings. There are only a few specialized inquiries available [36].

During 1993/1994, in the federal state of Baden-Württemberg 98% of disciplinary offences were suspended. Only one case resulted in an indictment. In Bavaria about 83% of approximately 2,400 preliminary proceedings against police officers in 1997–1999 were settled by a dismissal or a verdict of not guilty; and in Berlin about 96% of criminal proceedings against officers were settled in the same way during the period 1994–1999. The disciplinary proceedings for offences committed while on duty show a similar pattern. In Berlin, in 1999, only 26 cases of physical injury whilst on duty were followed by disciplinary proceedings; in 1998 the number rose to 34 cases; and in 1997 to 51 cases. Between 1994 and 1999, approximately 75% of all investigations into offences brought to disciplinary proceedings were dismissed through non formal procedures [20].²

¹ This corresponds with the statements of the participants of the focus groups whom we interviewed.

² In this regard there is a discrepancy between these statistics and the findings of the interviews of our focus groups based on the subjective feeling of the police officers. The fear of being punished for "misbehaviour" on duty was almost generally expressed. This can be attributed partly to the fact that situations which possibly require excessive use of force are a worry to police officer, not only since such situations may cause death or possible harm to the person being maltreated, but mostly because of the fear of "loosing one's job", "risking one's career", possible resultant "mental problems", etc. [see also [31].

The empirical project: justifying police use of force

The focus-groups: sampling and data collection

Between May and December 2004, eight focus groups in eight federal states of Germany were conducted (Baden-Württemberg, Berlin, Bremen, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Sachsen-Anhalt, Thüringen). The selection of the focus group participants was left to the Police College in each state, who supported the research project by finding volunteers for the focus groups. Officers between the ages of 25 and 45 and with 6 to 25 years of service in the police took part in the focus groups. The number of participants per focus group varied between five and nine. In total, 52 police officers (13 women, 39 men) took part. In most cases the participants had several years of experience on patrol duty. In addition, a lot of them were experienced in other activities such as riot squads, the federal border guard or special task units. The focus groups were usually conducted in the seminar rooms of the relevant institutions, with only the interviewer and the focus group participants present. At the start, participants in each focus group were informed about the nature and background of the project.

As with research conducted at other sites in the international project on the use of force, the German focus groups were presented with a sequentially developing scenario, which describes a routine encounter with two young men in a (possibly) stolen car and escalates to a vehicle chase and armed confrontation (see “Appendix”³). The participants did not have the text of the scenario; it was read out by the interviewer one step at a time, allowing for discussion of each stage, with primary attention directed to options for the use of force and the justifications for using, or not using, force. In each and every focus group, all participants avidly participated in the discussion. At the conclusion of the discussion, each group was asked two additional questions: first, whether they regarded the scenario to be realistic or not; and second, their interest in the subject overall.

The shortest focus group took 30 min; the longest a little more than 2 h. With the approval of the participants the discussions were recorded (stereo microphone and MD-player), transcribed and afterwards summarised with the overall focus of the project in mind. In addition, the participants provided information about their age, their years of service and their activities. Before a new focus group commenced, the summary of the previous interview was analysed as a means of improving on the next one. This enabled us to record first findings, unusual events or open questions. The transcribed recordings are available in German in pdf-file format. In total there are 525 min of recording and more than 300 pages of transcription (with between 22 and 50 pages per interview).

Results

The reaction to the scenario, introduced step by step, and its analysis by the participants was similar in all focus groups. The description of the results is

³ For the German part of the project the original scenario, translated into German, was used. In the German version, the passengers are two young Turks, in the original Italian.

orientated by five main topics which straddle the different stages of the scenario. They form the following sub-headings and correspond with themes which arose and were identified from the focus group discussions.

Fear of escalation: from the routine situation to the “horror scenario”

Initially, participants assessed the risk of the situation in general, meaning that a “trained” judgement was made of the situation, or a judgement of what problems could possibly still develop (these being based on experience). Some of the participants immediately described what they regarded as a “reasonably routine response” to the situation.

The initial stage of the scenario (sighting the car with two suspicious individuals inside) was nearly unanimously described as “ordinary” or “standard;” however, there were also possibilities of danger. According to the participants, this is a situation which, in their experience, could easily escalate at intervention. On the other hand, possibly due to the tinted screens of the car, the scenario may have come across as confusing and thus appeared to be a potentially dangerous situation. In addition, the participants anticipated that the citizens involved might behave differently than expected. An “escalation” of the situation was expected, and participants already expressed the possibility of “losing ground.” Already here a substantial dilemma emerged: on the one hand, the police officers wished to set limits; on the other hand, they are trained to continue, for as long as possible, to conduct the encounter avoiding escalation. Thus, the immediate and ominous question for the police as role players was: how can their demands be driven home if their requests are not obeyed?

As the scenario unfolded, the situation became more complicated step by step. The more the scenario escalated, the more it was judged to become difficult and confusing. An ever increasing amount of responses were seen as necessary to “get a grip” on the situation and “to manage” it (e.g. radio contact, running, asking for reinforcements, chasing the vehicle, looking for and after injured people). Added to all of this was a perception of the increasing danger to their own person and to third parties. The last part of the scenario was described by participants in nearly all the focus groups as every police officer’s “horror scenario” (although different words were used). This is particularly so from the moment in the scenario when the runaway suddenly stops in the shopping mall with a weapon obviously in his hand. Added now to the anxiety of endangering third parties, described earlier, was the extreme danger to their own person: the possible use of police firearms, which earlier was “out of the question” since this could endanger third parties, now seemed inevitable.

In this last stage of the scenario, distinguishing between legal guidelines (i.e. what has been taught) and emotionally-driven action was very difficult. However, the more thoroughly the participants “thought out loud” about the reasons for their response and considered possible activities, the more obvious it became (to the outside observer) that, apart from the legal and institutional regulations or guidelines on how to act in such situations, the reasons put forward for specific responses derived from individual perceptions, and differed greatly from participant to participant. This heterogeneity increased as the scenario unfolded. Whereas the

routine response described at the outset was mostly similar, over the subsequent stages the responses of the participants regarding how to control the situation became absolutely divergent, as rationally determined actions become dominated by the emotions.

Basic conflict: rational action vs. emotional behaviour

It became increasingly difficult for all involved as the scenario progressed to separate legal orders and learned action (the rational) and emotionally determined behaviour (the emotional). As mentioned before, the more the focus group participants reflected, so to say in public, on the reasons for their action and on the situation as it was presented to them, the more it became clear that, apart from the legal and institutional guidelines on how to act in such a situation, the reasons for their actions derived from subjective feelings—and that these were individually quite different. The following aspects of the scenario illustrate this:

- *The gender conflict:*

To finish the conflict between the female officer and the male passenger and to deescalate the situation, the rational action would be to swap the roles, but emotions can arise:

And the (male) colleague attacks our counterpart rather than I do. And he (the counterpart) is quickly pushed against the car.' Leave her (the female colleague) alone! What have you called my colleague? Have you insulted her?' So (...) the guardian instinct." [FG01—female officer: 1133–1137].

- *The pursuit of the fleeing car:*

Abandoning the chase, and abandoning all thought of ramming the car, because of danger to third parties or disciplinary consequences, is mentioned as the sensible rational action.

I feel it's highly dangerous. You endanger yourself, you endanger third persons, you never know, you may drift away and hit a group of old-age pensioners, you never know before what may happen [FG03: 1007–1011].

Nobody would do so. Well, I wouldn't really think of ramming someone. Maybe, if he stood by the road, shooting dead half of the people he sees, then I would perhaps take it into consideration. In principle, the idea of ramming someone is absolutely unrealistic [FG03: 1033–1039].

(...) On the one hand it's forbidden. Forbidden means, not allowed as in America, but ramming to stop him is forbidden; and on the other hand the damage you are causing, you are getting the shitty end of the stick. You are really in bad trouble. There's the financial thing, you must pay for the damage, and then there's perhaps the disciplinary thing in any case. So you restrain yourself. So I prefer to let him go to save my skin [FG05: 825–833].

But this rational, precautionary, thinking can be displaced by the chase up to the final confrontation, including ramming the car. This is due to the so called “hunting instinct” and/or wounded vanity.

Of course we have to admit, (..) that strong dynamics (...) will emerge. (...) Not only in oneself, but also in the colleagues. Yeah, I tell you, all hell breaks loose on the radio (...) Everyone gets a bit of hunting-fever and all this mounts up. This can create a really wild situation. And I can absolutely imagine that ideas rise like ‘We are going to stop him!’ or ‘The two of us are going to drive on the lane and force him to slow down or set up a road block!’ [FG03: 1057–1066].

I think this ramming thing is a stupid idea of every police officer. Everybody sees it in every cracked TV series, whatsoever: ‘Colt Seavers,’ ‘Balko’ or—I don’t know, ‘Die Autobahncops,’ they are all ramming something off the road and everybody wants to ram a car [FG03: 1004–1007].

- *The possible separation of the patrol partners:*

When *chasing the offender on foot* the rule of “never separate” because of the need for self protection [“Eigensicherung”] would be the rational action, but “each one catches one” prompted by the “hunting instinct” results in emotionally charged behaviour to resolve the situation.

It’s dangerous when they separate in this situation. (That’s) not unlikely, but actually it must not happen that the partners separate in such a situation (...) [FG01: 713–715].

Never pursue someone alone! I’ve seen how a colleague was stabbed. No, never. It’s in my mind, irrevocably. (...) If I’m involved in a fight—alright, but simply chase someone? Is it worth it? Things I experienced years ago come into my mind. Maybe it’s different for any individual colleague. I was in situations when a colleague pursued someone alone and you are wondering ‘What a nonsense, what is he doing?’ [FG04: 514–521].

- *The possible use of a weapon:*

At the end of the scenario, the rational action of not using a weapon within a mall to avoid endangering bystanders was mentioned by the officers in the focus groups.

I must take cover. I can’t start a shooting now. If I hit bystanders who are not involved, there will be an uproar. The use of guns isn’t justified then [FG03: 1332–1338].

How many people are there? That’s decisive for my action. If it took place in the evening and, let’s say, in an empty shopping centre, he would be confronted. And then it’s up to him how to respond. (...) But if things were different, I think they would, if there were people, they would break up because that would be a situation that can’t be controlled and in the end the damage would be enormous [FG05: 1112–1118].

But this can be displaced by thoughts of saving one's own life, so that the emotional dimension appears.

That moment when I personally was confronted with an armed criminal halting in flight, facing me and saying: 'Hey policeman, c'mon!' and then he even gets ready to move his hand holding the gun. Well, sorry—rather him than me [FG01: 919–923].

(...) There are two possibilities for you: you stop, look silly and die, or you shoot [FG05: 1225/1226].

(...) If he points his gun at me or if he gets ready to raise it, (I see to it) that I protect my life. And I'd do so again if it were necessary. For it's important for me to protect myself. If there's no possibility to jump aside, for cover, maybe I won't notice the shopping center anymore. You don't see it anyway, you only see that person. Well, I only saw this person, I didn't take in anything else beyond. Everything beyond was kind of gone. And so was the physical pain I suffered from. Before he had beaten me with an iron bar. I didn't realize it. I don't know how the two colleagues will decide. If it goes against my life, I would try to protect it in any case (...), to the very last [FG07: 1517–1529].

The aspects above emphasize the basic conflict that officers experience. They run into danger and proceed contrary to reason. Rational action is replaced by emotional behaviour. The importance of emotions and, consequently, the divergence in responses increased as the scenario progressed. Whilst at the beginning of the discussions most participants still formulated relatively uniform responses to the situation at hand, the responses put forward became increasingly divergent as emotionally-directed behaviour was superimposed on rationally-directed action.

General conditions affecting the excessive use of force

The individual responses, and the reasons and justifications for them, depend on different factors: violent actions are not only determined by what is legal. In this respect, the following unquestioned basic determinants were mentioned by officers in the focus groups: (a) *The assertion of police interests "as a police officer";* (b) *the expectation that the police as an institution should not to show any sign of weakness,* (c) *the "Legalitätsprinzip"⁴ must be followed,* (d) *the avoidance of escalation,* and (e) *the assumption that requests from police officers do not (always) need to be explained to the citizen.*

Certainly these influences are permanently present at the back of the police officer's mind and thus also play an important role with regard to the consequences. However, as the scenario unfolded these considerations faded increasingly into the background, and were replaced by other factors as the situation became more confusing and escalated. In most cases, no clear distinction could be made between the legal justification and the individual and often legally questionable justification

⁴ As mentioned previously, in Germany, police officers are not allowed to dismiss or suspend cases by themselves; they have to bring each and any offence which they are aware of to the public prosecutors office (in German: "Legalitätsprinzip").

for actions. Often these aspects interacted and were connected with other factors or dependant on them. Thus, an interactive network of subjective perceptions and more structural factors arose. The latter can be divided into organisational factors, personal factors, and situational factors. In this respect, different areas could be emphasized which had different influences on the individual justification of police actions and the excessive use of force. All of these factors had different influences at different times on the individual notions of what was a justified response, particularly a justified violent response. In what follows, each of these factors will be examined in turn.

First, there are *structural factors within the police force itself (organisation)*. Above all, structural factors at the level of the police institution are organisational factors, such as training, equipment, the physique of the patrol partner, the cooperation of the team, peer pressure, possible support and backup.

There is another dangerous situation, if you are with a colleague in the patrol car and one can run fast, but the other can't. The first one starts pursuing him and the other one lags 50 meters behind. (...) then you won't stop and wait for your colleague to catch up (...) or to heave his potbelly from behind the steering wheel [FG01: 713–726].

... who weighs 120 kg or whether he's 30 and plays football in his free time. (...) First, it depends on how athletic my colleague is, then, how athletic I am. Can the two of us run after them or am I alone after 400 m? [FG07: 1100–1118].

The focus groups revealed the tremendous importance of coordination among the patrol teams regarding their intended action. They also emphasised the advantages for the patrol team that derive from working together for a long time (for example, the police officer knows how his colleague will react in certain situations).

The experience with the colleague I've patrolled with often, that's the important point. (...) I can make a situation escalate, with people who are normally nice and peaceful. They may suddenly go berserk there [FG07: 1336–1340].

The worst thing that may happen is that you are on patrol with a colleague you can't rely on and if you have experienced situations with him where you couldn't rely on him. Then you needn't patrol with him again. Well, I probably wouldn't go on an operation like this with him. Yeah, also within the department, even if it caused trouble with the staff, I wouldn't care. If I've got a colleague and I realize that I don't get on with him in certain situations or that he doesn't care much for steps for our own safety, I won't go again on patrol with him [FG01: 1106–1116].

Consequently, the focus group participants spoke about the importance of similar physical abilities among patrol partners. Participants also referred to the problem of creating a misunderstanding with their colleagues and, consequently, being regarded as a "scaredy cat":

(...), that it has made me more careful and I'm more inclined to decide: 'I won't go in there. I'll call for the SEK ('Spezialeinsatzkommando'—a special task force)!' Maybe some colleagues laugh at me saying, 'Hey, are you shitting yourself?' Oh no, I prefer to wait for an hour and then, please, the SEK must go

in there (...) that's what the special forces are meant for and that's what the SEK is for, and if they are available, they should come, please [FG01: 1046–1049].

Second, there are *structural factors connected with personal (individual) characteristics*. Personal factors are, for instance, experience, years of service, ability to cope with stress, individual characteristics, and knowledge about the person involved in the encounter with the police and about the environment. Here a distinction can be made between personal negative experiences on duty for the officers themselves (as well as the knowledge of similar experiences of colleagues) and basic experience accumulated from many years of service.

I mean this, what you have experienced, that you become more and more careful. Five times you have entered a flat and every time it has been worse somehow and you have always kept something in mind, every time, and you've thought, 'Man, that's something you must pay attention to next time(...). That doesn't mean that this has caused my inhibition level to rise and I think: 'No, I won't intervene,' that's not what I mean. Of course I will intervene if there are any clues; however, maybe I'll simply withdraw more easily or sooner in some cases than I did when I was 18 or 19. (...) Somehow you become more fearful because you've got some experience [FG01: 1041–1073].

Whilst presumably negative experiences have the effect of making officers behave more cautiously or even nervously, longstanding service without such experiences may result in negligence.

That's a good effect, but most colleagues, (...) having done a few years on the job, start to slide into a certain rut. (...) There are many of them sliding into such a rut, e.g. hands in their pockets during a vehicle check or identity check [FG01: 1074–1076, 1078–1080].

Additionally, with increasing years of service officers admitted to a "certain disappointment:" from their point of view, too often the response of the criminal justice system to citizens after arrest or charging is "lax". Especially if an officer has been attacked—meaning their life was put at risk—the punishment that follows provides a certain "satisfaction". If this is not forthcoming, frustration results, which may, in later actions, find expression in a manner akin to taking the law into one's own hands.

There are legal proceedings, maybe a complaint for assault, resistance, verbal abuse, let's say four offences, then they are in front of the judge, and the judge says: 'Hmm, well, poor boy, bad childhood, father died a long time ago or is still a soldier in Turkey or somewhere, is living with six brothers in a small flat, you naughty boy!' And that happens seven times, eight times—nothing unusual, and sometime or other he may get a fine and that's all, the matter is closed. [FG03: 275–283].

(...) What remains in the end—nothing. And (you end up) with an unpleasant feeling in this story (thinking): 'Next time (...) I'll do (better)!' (...) so that I'm satisfied: 'Okay, maybe it wasn't correct, but they got what they deserved' [FG07: 810–812].

Third, *structural–situational factors* also play an important role. For instance, in discussing the scenario the participants pointed to the visibility factor, the distance and number of persons facing the police, the danger for the police officers

themselves and for uninvolved third parties. Other factors that were also mentioned have to do with the characteristics of the persons facing the police (for example their physical condition, their reaction to the police officers and to requests made by the latter, and whether the person knows the possible legal consequences of their actions). Still further factors have to do with the locality (for instance, town or rural area, time of day, presence of pedestrians, etc.).

If they cross the border, normal enforcement action will follow, I'm (not) referring to concealed slaps in the face or a push, but they are forced to the floor. There you can, let's say, grasp them a bit more vigorously [FG05: 494–508].

On the other hand it was pointed out in the focus groups that, in the scenario, the second person in the car, or uninvolved bystanders who might side with the people in the car, added to the possibility of an endangering or escalating situation, simply because the police officers were outnumbered. One could then conclude that officers' responses are not reflex actions, but that the situation is briefly assessed and the ensuing response is, in a way, a conscious one.

In this situation, as it is described, an escalation would be rather dangerous, because the other one is sitting in the car. This may be the reason why it doesn't escalate that much. (...) This could be the reason why it perhaps doesn't escalate so easily, the second one, so that the colleague restrains himself [FG01: 1183–1191].

At the point where one or several additional persons are noticed, a comparative calculation takes place and (excessive) force is only used when the officers assume that they are in the majority or in an overall stronger position.

Perception of the situation

The perception of the situation influences the police response strongly and serves as a justification for the use of force, especially when current and future conflicts are perceived. The structural factors mentioned earlier have to be considered as resources that are taken into account in a cost–benefit analysis of the decision to act. The decision's degree of rationality, however, depends on how officers assess the situation and on the general conditions—and these too are “subjective.” Frames of interpretation or emotional conditions may be attached to the described subjectivities, as in:

The *officer's individual assessment*, that, for instance, giving up the pursuit is regarded as a sign of weakness,

And then you will have an argument with your partner in the car if you, as the co-driver, tell him ‘Stop it, stop it!’ (...) The driver will answer ‘Hey, are you nuts? I'll follow them!’ (...) Then there's the conflict with my partner. (...) ‘Are you cracked? Why do you want me to stop?’ (...) I mean, you've got the argument in addition [FG01: 492–509].

or a *sense of disgrace and wounded vanity* when the police request is not obeyed or citizen flees (for example, the officer may regard this as a personal offence, insult and provocation),

We have to cope with the fact that there are situations where we as police officers can't do any more. It's always hard because your ego is like that, you want to do something. You want to get control of the situation, but it's impossible [FG03: 1551–1555].

It's an extremely dissatisfying situation. When you, being a police officer, realise: 'I'm helpless or powerless, whatever the situation may be' [FG03: 1566–1567].

and an *upsurge of the* "hunting fever" (meaning the inability to keep the emotions under control and, hence, a solely reflex-based response).

The question is quite plain: am I thick-skinned or not? So far I have not gone wild and slapped someone, but I do not know if I will find myself in a situation where I'm emotionally stressed or in family troubles(...), that's exactly the situation I've never wanted to be involved in, and then I hit somebody [FG07: 711–719].

Fear of escalation, maintenance of authority and subjective assessment

Although these factors interact, the basic conditions to avoid escalation, the desire to maintain authority and the prevailing subjective assessment of the situation seem to crystallise as the decisive factors. The more the officers are drawn into the whirlpool of conflicts between maintaining authority, on the one hand, and the fear of escalation on the other hand, the more their actions will be determined by emotions, and the higher the probability that legal guidelines will be ignored and that a violent response will serve as a mechanism to resolve the conflict.

That's a kind of 'Point of no Return'. You are there and you will carry it through to the end, the measure will be finish [04: 462–463].

As already stated by Alpert and Dunham [1], it then becomes increasingly difficult to capitulate and to stop the spiral of violence. Again, the subjective perception gains heightened importance: via these perceptions conflicts are assessed, framed and the "problematic situation" is sorted unconsciously or consciously into different "drawers."

This analysis of the situation has direct effects on the officers' conflict management strategies. These again rely on the resources available to the officers, which can depend on the organisation, but may also be person-based (for instance, whether or not they are part of a team; the availability of equipment; or the ability to manage stress; whether the officer is on form on the day; or simply the personal ability to retreat, if necessary, without subjectively suffering a sense of disgrace or experiencing it as an insult). If, according to personal judgement, (a) the resources are inadequate to solve the conflict non-violently or through direct physical coercion within the scope of the legal framework; or (b) rational considerations are entirely pushed into the background; then (c) violent actions that are not legally justifiable, i.e. excessive use of force, may result.

I'm sure most colleagues think: 'I've got to do something. I can't simply sit and do nothing, I must do something. Because I'm the police officer here who has to take action. So, if I don't, who else?' is what I personally think. For I can't

expect citizens to start or do something. Because they haven't realized the situation yet or they haven't got the information I have. So anything, I think, has to be done, whatsoever. What it looks like in the end—it's an extreme situation, that's what I feel, the one will react like this, the other one differently [FG03: 1517–1527].

(...) Thinking about the legal problems, what will happen to me or the psychological side 'Oh God, it's my fault that this guy is dead!' I think that's absolutely secondary at that moment [FG04: 762–766].

(...) in this scuffle, then she got out of the handcuffs (...) I was so fed up with it, because she did not even stop then: 'Hey, you fucking pigs!' (...), I swung round and simply gave her a kick in her ass [FG05: 510–539].

Regarding possible violent responses by officers, three different frameworks for justification can be identified according to our observations. These will be described in the next sections.

Justification frameworks

Giddens understands the circumstances of the subject (in this case the officer) in the moment of situational perception, as “contextual” [17] and defines them via two major moments: the structure (external conditions) and the biographic state of the actor (available knowledge reserve) [also see [53]. External factors represent the structures of the social and physical worlds, the conditions and means which allow the officers specific strategies of action or hamper them. Here, social and economic factors are involved (for instance social status, occupational rank, memberships of groups, expectations of the role or norms), together with local conditions (e. g., the physical environment, presence or absence of others) where the action takes place [also see [40]. With the aid of these social, cultural and physical factors perceptions are individually “constructed”. With regard to a possible violent action by officers, our observations suggest that common interests seem to exist which result in three different patterns of justification.

Justification framework no. 1: excessive use of force as reaction to resistance against governmental authority

Here, within the legal framework, all the physical coercion “that is legally permissible” is used, and is justified on the surface by the fact that a prosecutable offence has been committed. In the scenario there was a breach of the law and a minor drug offence. Because of the principle of legality, the officers are basically obliged to prosecute the offence. In cases where, for particular reasons, it does not make sense to formally investigate an offence (for instance, by writing up a report) because of perceived high work pressures or because a dismissal of the proceedings by the public prosecutor is expected anyway, officers are prepared to waive the principle of legality in the daily routine.

According to the focus group participants, in general, in relation to the scenario the whole range of physical coercion can be used, which is regarded as being

justified and covered by law. If and to what extent legal force is used depends on the reaction of the person receiving the request from the officers.

Well, I must confess: I've applied violence as appropriate means simply to make myself respected. I don't know whether you come from cities with big problems with Russians. In X. we have got really bad trouble with Russians and maybe I'm conditioned in a different way by the job I've done abroad (the country is known). So, if I tell a Russian twice to take his hands out of his pockets so that I can see them and he doesn't do so after the second request, in that case it happened that I hit him. And it worked. So this group of young Russians now knows that, if they are told to take their hands out of their pockets, it works now. [FG04: 879–899].

It is the officer who decides—or it depends on their subjective feelings—whether actions will arise that exceed what is necessary and thus legal. Here, aspects such as being not on form on the day, excessive workload, irritation, etc., can have an effect on the perception of the situation.

May be there are days, when I'm in high spirits, I don't care. But the next day, I might respond much more vigorously [FG07: 482–484].

That's correct, if you are really stressed, if one thing adds to the other, having been on duty for weeks plus constant overtime work—then you are simply stressed, you are bugged. You can't conceal it in your private life, nor can you on your job [FG05: 646–650].

These aspects can have a bad influence on the subjective perception of the situation by the officers. Thus, to ensure respect for governmental authority, it is possible that excessive force will be used. Even though abuses are generally considered as being unacceptable, the “faux pas” may be treated with understanding by colleagues—a pattern of action that underscores the importance of (local) police subculture(s) as described earlier.

And it depends on how they respond, whether they get even more aggressive, maybe start pushing, insulting—if they do I really could imagine, I really could understand if a colleague acted a bit more vigorously than necessary. I'm not implying that it's alright for them to—let's say—take the truncheon and, hmm, beat them up. In that case I'd say ‘Stop it, that's enough!’ But if they seize them a bit more vigorously, I could ignore it (all laughing) [FG05: 386–418].

Justification framework no. 2: excessive use of force as a consequence of disrespect towards the officer himself and/or his colleagues in their function as police officers

This frame of justification is almost a transition between resistance against governmental authority (mentioned above) and an attack regarded as being personal (see below). Here the excessive use of force is basically regarded as being not legal, but, in a given case, is justified by the argument that “as a police officer” one does not have to accept insults. In fact, officers act both in response to individual feelings, as well as in response to their role as a police officers. Examples are insults directed

at officers in their function as police officers or insults that evoke the “guardian instinct” of male colleagues towards their female colleagues.

Well, we have to be honest. (...) If someone says ‘fucking pigs’ or such like, I feel this is an insult to the police as an institution, but I don’t allow anyone to call me ‘paedo’, I’ll paste him one at once. So let’s be honest, if it’s defamatory, I won’t stand it, clearly spoken. Of course, where violence can be avoided, but if someone ‘shakes the tree of slaps’... [FG04: 891–900].

When the (female) colleague is verbally attacked in some way, so that the guy beside her (...) doesn’t like it either and responds in a different way, i.e. to call them to order, and this may be the first step to make the course of things slightly more troublesome. [FG03: 120–125].

Justification framework no. 3: excessive use of force as a consequence of an attack against the officer’s person

Excessive use of force, in most cases, happens spontaneously. Initially rational considerations are phased out. They only appear afterwards, possibly reconstructed in such a way that the infringement can be justified. Initially, these actions are overlaid by emotions and mostly they can no longer be sensibly related to the actual situation. Here, personal reasons and subjective perceptions become the focus of attention. The officer does not see or feel himself attacked in his role as a police officer but as an individual person. The justifications here are multiple and range from reflex actions, fear for one’s life, and the release of pent-up aggressions, to special personal shock.

That happened to me with someone attacking me with a sabre, and when I thought about it, he was lying on the floor: ‘He was going to kill you, he lured you in here and he intended to bump you off.’ Then it was over, hmm, don’t know, he had rib fractures in the end. [FG03: 487–501].

When it’s only about resistance, in a legal sense, let’s say, but you haven’t been physically hurt—well, you break him by simple physical force or so, handcuff the persons and that’s all and then you turn to handle the case. If, however, you really had to defend yourself, defend yourself to the last because it came to the point where your personal wellbeing, not the police officer was attacked, not the official, but you as a human being was attacked (...) [FG03: 526–539].

Well, I know a colleague who hit someone in a situation where a child was being beaten up by the father and then the father turned towards him and said: ‘Hmm, what’re you goin’ to do now?’, grinning. Then my colleague swung at him and hit him. Because he had broken the child’s ribs and arms; a child only two years old. Later on I thought about what I would have done. I saw my son in such a situation. And if someone had done it to my child, probably I would have also—I’d have been maddened with fury. I’d have hit him, probably. [FG07: 732–741].

Everyone tolerates things to a certain limit, and that’s a limit, where you at a certain point (...) it’s like crossing the border. And if you (transfer) it, as in this

case, to your personal environment, and you're inclined to do so if it's about dead or beaten up children (...), you easily get emotionally involved. Because it deeply affects you. [FG07: 746–751].

If and to what extent abuses occur varies greatly from officer to officer. In the case of increasing escalation it particularly depends on the conflict management skills of the individual officer. However, if infringements do occur, these are “sorted” into one of the patterns of justification described. The individual behaviour is then transformed “to a general level”. The individual may admit to a “mistake,” all things taken into consideration; however, it is described as an almost inevitable measure: that in this actual situation one would not have been able to act otherwise.

Conclusion

Using focus groups to which a hypothetical, sequentially developing scenario was presented, our study looked for “constructions” to (legally and personally) justify physical coercion and excessive use of force. As a possible general set-up for police infringements the following factors were identified: basic assumptions, the organisation, the person, the situation and subjective judgement. In explaining abuses, the fear of escalation and the desire to maintain authority as basic conditions seem to be of special importance. If an escalating situation cannot be managed either with organisational or personal resources within the scope of the legal framework, and when it is additionally combined with a subjective judgement of an emotional insult, offence or provocation, then one of three frameworks of justification for police infringements may be activated: an attack on the authority of the state, a lack of respect towards the social role of the police officer, or an attack on the officer's person. In these frameworks, legal aspects are clearly pushed into the background—legality is replaced by justification. Police training, and further training aimed at lessening the excessive use of force can profit from an understanding of this spiral of escalation. One can start by identifying the paradox of partly incompatible basic targets (maintenance of authority and prohibition of escalation which draws the “thin line” that must be trod), analysing the general conditions (organisation, person, situation) and/or naming the obviously decisive patterns of perception (insult, offence, provocation). In this way, we can go a fair way in achieving the goal of a civilised minimum of use of force, including by those who have, according to Weber, the monopoly of the use of physical coercion.

Appendix

The German scenario

Stage 1: It's dusk on a summer evening with lots of people out and about in public. Woman police constable (German: 'Polizeihauptmeisterin' [PHM]) Müller and Police Inspector (German: 'Polizeikommissar' [PK]) Schmidt are on a routine mobile patrol in a 'rough' part of town. They see a new BMW

with blacked out windows and booming to the sound of a stereo system. The car engine is running. The car is parked in a manner that is causing a minor obstruction to passing traffic. The officers decide to pull over and have a word with the occupants of the car. WPC Müller alights from the patrol car and walks over to the car. She taps on the front passenger window which is lowered a few inches. In the car are two young Turks, one of whom—M. Öztürk—the officer recognises straightaway as a local petty criminal. There is the distinct odour of cannabis smoke from within the car.

Stage 2: The occupants of the car refuse to comply with the officer's request that they step out of the car and provide driving documents. They challenge her authority to make this request and accuse her of picking on them because they are Turks. This conversation is conducted loudly and with frequent use of obscenities.

Stage 3: In the course of this conversation the driver suddenly drives away at high speed. Meanwhile, Police Inspector Schmidt has been running a check of the licence number of M. Öztürk and as the car pulls away is informed that the car is suspected of involvement in a drug-related shooting incident. M. Öztürk has a warning signal for possession of weapons. The officers follow the car and soon other units are being deployed to the pursuit. The pursuit continues for some distance with the BMW failing to stop at traffic lights and nearly colliding with other vehicles. As it attempts to negotiate a left turn, the driver loses control, collides with another vehicle and comes to a halt. The occupants jump from the car and begin to run into a housing development.

Stage 4: The officers pursue the occupants of the car in foot towards a shopping area. As they do so, they see that Öztürk is holding a handgun.

Questions asked by the interviewer regarding the individual stages

What do you think happens next?

What will the officers do and why? What else might they have done?

On what it depends how they decide?

How in your view should the officers respond?

Why? Are they justified? What actions would be appropriate and inappropriate?

References

1. Alpert, G., & Dunham, R. (2004). *Understanding police use of force. Officers, suspects, and reciprocity*. Cambridge: Cambridge University Press.
2. Alpert, G. P., Kenney, D. J., & Dunham, R. (1997). Police pursuits and the use of force: Recognizing and managing "The Pucker Factor"—A research note. *Justice Quarterly*, 14(2), 371–385.
3. Batt, R., & Dickhaut, S. (2004). *Verhaltensempfehlung Personenkontrolle zum Leitfaden 371*. Diplomarbeit an der Hochschule der Polizei Baden-Württemberg. Villingen-Schwenningen.
4. Behr, R. (1993). *Polizei im gesellschaftlichen Umbruch. Ergebnisse der teilnehmenden Beobachtung bei der Schutzpolizei in Thüringen*. Holzkirchen.
5. Behr, R. (2000). *Cop Culture—Der Alltag des Gewaltmonopols. Männlichkeit, Handlungsmuster und Kultur in der Polizei*. Opladen.
6. Behr, R. (2006). *Polizeikultur. Routinen—Rituale—Reflexionen: Bausteine zu einer Theorie der Praxis der Polizei*. Wiesbaden.

7. Bornewasser, M., & Eckert, R. (1995). *Belastungen und Gefährdungen von Polizeibeamtinnen und -beamten im alltäglichen Umgang mit Fremden*. Abschlussbericht zum Projekt "Polizei und Fremde". Trier.
8. Bosold, C. (2006). *Polizeiliche Übergriffe: Aspekte der Identität als Erklärungsfaktoren polizeilicher Übergriffe*. Baden-Baden.
9. Chan, J. (with Devery, C. & Doran, S.) (2003). *Fair cop: Learning the art of policing*. Toronto: University of Toronto Press.
10. Feltes, T., & Punch, M. (2005). Good people, dirty work? Wie die Polizei die Wissenschaft und Wissenschaftler die Polizei erleben und wie sich Polizeiwissenschaft entwickelt. *Monatsschrift für Kriminologie und Strafrechtsreform*, 88, 26–45.
11. Feltes, T. (1996). *Stellungnahme zur Expertenanhörung "Mauer des Schweigens"*. Parlamentarischer Untersuchungsausschuss "Hamburger Polizei" der Hamburger Bürgerschaft. Hamburg.
12. Feltes, T. (2000). Police integrity and the police organisation—L'intégrité dans l'organisation de la police. *La Deontologie Policiere, instrument de consolidation des droits de l'homme*. Paris (Ministère de l'Interieure), 10–21 (French), 86–95 (English), 234–255 (Arabian). http://www.thomasfeltes.de/html/Police_Integrity.htm.
13. Feltes, T. (2004/2005). Police forces and correctional systems of Germany. *The World Encyclopedia of Police Forces and Correctional Systems*, (to be published in 2004/2005).
14. Feltes, T. (2005). *The Use of Force and Firearms and Force in Germany*. Lecture at the Dutch Police Academy. May 2005. Available via <http://www.thomasfeltes.de> or <http://www.Policeuseofforce.org>.
15. Feltes, T. (2006). Legitime oder illegitime Gewalt durch staatliche Institutionen: Gewalt und Polizei. In: W. Heitmeyer & M. Schötle (Eds.), *Gewalt, Schriftenreihe der Bundeszentrale für Politische Bildung*, (563, pp. 539–556). Bonn.
16. Fyfe, J. J. (1988). Police use of deadly force: Research and reform. *Justice Quarterly*, 5, 165–205.
17. Giddens, A. (1988). *Die Konstitution der Gesellschaft. Grundzüge einer Theorie der Strukturierung*. Frankfurt a.M.: Campus Verlag.
18. Goffman, E. (1986). *Interaktionsrituale. Über Verhalten in direkter Kommunikation*. Frankfurt a.M.
19. Gössner, R. (2003). "Fürsorgepflicht" oder "Organisierte Verantwortungslosigkeit"? Strukturelle Probleme bei der justiziellen Aufarbeitung von Todesschüssen und Prügelsszenen am Beispiel Thüringens. *Frankfurter Rundschau*, p. 7, August 12.
20. Kant, M. (2000). Ausmaß von Polizeiübergriffen und ihre Sanktionierung. Über das Problem einer zahlenmäßigen Erfassung. *Bürgerrechte & Polizei/CILIP* 67, 3/2000, 20–27.
21. Klockars, C. B. (1980). The dirty Harry problem. *The Annals of the American Academy of Political and Social Science*, 452, 33–47.
22. Klockars, C. B., Ivkovich, S. K., Harver, W. E., & Haberfeld, M. R. (2000). *The measurement of police integrity*. National Institute of Justice. Research in Brief. Washington.
23. Manning, P. K. (1995). The police. Mandate, strategies, and appearances. In V. E. Kappeler (Ed.), *The police and society* (pp. 114 ff). Prospect Heights: Waveland.
24. Manning, P. K. (1997). *Police work* (2nd edn). Prospect Heights: Waveland.
25. Manzoni, P., & Eisner, M. (2006). Violence between the police and the public. Influences of work-related stress, job satisfaction, burnout, and situational factors. *Criminal Justice and Behavior*, 33, 613–645.
26. Mastrofski, S., Reisig, M. D., & McCluskey, J. D. (2002). Police disrespect toward the public: An encounter-based analysis. *Criminology*, 40, 519–551.
27. Mastrofski, S. D., & Ritti, R. R. (1996). Police training and the effects of organizations on drunk driving enforcement. *Justice Quarterly*, 13, 291 ff.
28. Mawby, R. I. (Ed.) (1999). *Policing across the world. Issues for the twenty-first century*. London: UCL Press.
29. Ohlemacher, T. (2000). Die Polizei in schwierigem Gelände: Ein Plädoyer für eine veränderte Perspektive und neue empirische Projekte. *Monatsschrift für Kriminologie und Strafrechtsreform*, 83, 1–10.
30. Ohlemacher, T., Bosold, C., Fiedler, A., Lauterbach, O., & Zitz, A. (2002). *Polizei im Wandel - Abschlussbericht der standardisierten Befragung der Vollzugsbeamtinnen und -beamten der niedersächsischen Polizei 2001 sowie erste Ergebnisse der Gruppendiskussion*. KFN-Forschungsberichte, 87. Hannover.
31. Ohlemacher, T., Rüger, A., Schacht, G., & Feldkötter, U. (2003). *Gewalt gegen Polizeibeamtinnen und -beamte 1985-2000. Eine kriminologische Analyse*. Interdisziplinäre Beiträge zur kriminologischen Forschung, 24. Baden-Baden: Nomos.
32. Polizeiliche Führungsakademie Münster-Hiltrup: <http://www.pfa.nrw.de>. Cited 30. Aug 2008.
33. Punch, M. (1979). *Policing the inner city*. London: Macmillan.
34. Punch, M. (2003a). Rotten orchards: "Pestilence", police misconduct and system failure. *Policing & Society*, 13, 171–196.

35. Punch, M. (2003b). Policing for London and “honest policing”. In: Polizei-Newsletter. <http://www.polizei-newsletter.de>.
36. Pütter, N., & Kant, M. (1999). Die Polizei kontrollieren? In: Innere Sicherheit/Illoyal 6. <http://www.illoyal.kampagne.de/nr06/seite7.html>.
37. Pütter, N. (2000). Polizeiübergrieffe - Polizeigewalt als Ausnahme und Regel. *Bürgerrechte & Polizei/CILIP* 67 (3). <http://www.infolinks.de/cilip/ausgabe/67/puetter.htm#fn5>.
38. Pütter, N. (1999). Polizeilicher Schusswaffengebrauch - eine Übersicht. *Bürgerrechte & Polizei/CILIP* 67.
39. Reiner, R. (1993). Police accountability: Principles, patterns and practices. In R. Reiner & S. Spences (Eds.), *Accountable policing: Effectiveness, empowerment and equity* (pp. 1–24). London: IPPR.
40. Scheiner, J. (2000). *Eine Stadt – Zwei Alltagswelten*. Berlin: Dietrich Reimer Verlag.
41. Schwind, H.-D. (1996). Zur “Mauer des Schweigens” *Kriminalistik*, 50(3), 161–167.
42. Singelstein, T. (2003). Institutionalisierte Handlungsnormen bei den Staatsanwaltschaften im Umgang mit Ermittlungsverfahren wegen Körperverletzung im Amt gegen Polizeivollzugsbeamte. *Monatsschrift für Kriminologie und Strafrechtsreform*, 86, 1–26.
43. Tröndle, H., & Fischer, T. (2007). *Strafgesetzbuch und Nebengesetze* p. 55. München: Beck Juristischer Verlag.
44. Van Maanen, J. (1978). The asshole. In P. K. Manning & J. Van Maanen (Eds.), *A view from the street* (pp. 221–237). Santa Monica: Goodyear.
45. Verlag Deutsche Polizeiliteratur. (2006). *Polizeigesetz (PolG) Baden-Württemberg: Mit Durchführungsverordnung zum Polizeigesetz (§§ 49ff PolG-BW)*. Hilden.
46. Verlag Deutsche Polizeiliteratur. (2006). *Polizeigesetz (PolG) Baden-Württemberg: Mit Durchführungsverordnung zum Polizeigesetz (§ 54 PolG-BW)*. Hilden.
47. Waddington, P. A. J. (1999). *Policing citizens*. London: UCL Press.
48. Walker, S. (1998). *Popular justice: A history of American criminal justice* (2nd edn). New York: Oxford University Press.
49. Weber, M. (1919). Politik als Beruf. In W. J. Mommsen & W. Schluchter (Eds.), *Max Weber-Gesamtausgabe. Band 1/17: Wissenschaft als Beruf 1917/1919/Politik als Beruf 1919* (p. 159). Tübingen.
50. Weisburd, D., et al. (1998). *Abuse of police authority in the age of community policing: A preliminary study of issues and attitudes*. Washington D.C.
51. Weisburd, D., et al. (2001). *Abuse of police authority*. Washington D.C.: Police Foundation.
52. Werkentin, F. (1993). Tödlicher Schusswaffeneinsatz der Polizei 1974–1992. *Bürgerrechte & Polizei/CILIP* 44.
53. Werlen, B. (2000). *Sozialgeographie*. Bern: UTB.
54. White, M. D. (1997). *Deadly force and organizational change: A natural experiment involving two generations of Philadelphia police officers*. Paper presented at the 1997 ASC Conference in San Diego, CA.
55. Wilson, J. Q. (1968). *Varieties of police behaviour: The management of law and order in eight communities*. Cambridge: Harvard University Press.
56. Witzstrock, H. (2001). *Der polizeiliche Todesschuß*. Frankfurt am Main [et al.]: Lang.